

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY
3 Civil Action No. 08-337

4 In Regard to the Matter of:

5 Bayside State Prison OPINION/REPORT
6 Litigation OF THE
7 PASQUALE MARINO SPECIAL MASTER

8 - vs -

9 WILLIAM H. FAUVER, et al.,

10 Defendants.

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AT 8:30 M
WILLIAM T. WALSH
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FRIDAY, NOVEMBER 21, 2008

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20 BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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MASTROIANNI & FORMAROLI, INC.

Certified Court Reporting & Videoconferencing

251 South White Horse Pike

Audubon, New Jersey 08106

856-546-1100

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2 A P P E A R A N C E S:

3

4 ROSELLI & GRIEGEL, PC
5 BY: JAMES LAZZARO ESQUIRE
6 and
7 BY: CHARLES J. MOORE, ESQUIRE
8 1337 STATE HIGHWAY 33
9 HAMILTON SQUARE, NEW JERSEY 08690
10 609-586-2257
11 ATTORNEYS FOR THE DEFENDANTS

12

13
14 JAIME KAIGH, ESQUIRE
15 32 NORTH BLACK HORSE PIKE
16 BLACKWOOD, NEW JERSEY 08012
17 856-232-3337
18 856-232-4561
19 ATTORNEYS FOR THE PLAINTIFFS

20

21 RODNEY D. RAY, ESQUIRE
22 32 NORTH BLACK HORSE PIKE
23 BLACKWOOD, NEW JERSEY 08012
24 856-232-3337
25 856-232-4561
26 ATTORNEYS FOR THE PLAINTIFFS

27

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1 JUDGE BISSELL: I'm now reopening
2 proceedings in the case of Pasquale Marino, docket
3 number 08-337.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Marino.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Pasquale Marino was housed in Trailer
18 Four E and he recounts at length and in depth a
19 beating which he took first in his bunk and then in
20 his day room as he alleges by SOG officers who
21 extracted him due to, as he states it, mistakenly
22 identifying him as one who made a particular
23 utterance that might have led to disruption and,
24 indeed, further consequences regarding the inmate
25 population on his wing.

1 He describes an extensive beating which
2 one would have expected would have left marks.

3 Indeed, he even claims to have fainted as a result of
4 the offense in question.

5 However, there are other aspects of the
6 evidence presented in this record as a whole which
7 cast sufficient doubt upon the accuracy of Mr.
8 Marino's testimony as to lead to a conclusion that he
9 has failed to sustain his burden of proof in this
10 matter by a preponderance of the evidence.

11 As I've said, he described a
12 particularly aggravated and lengthy beating which
13 could not have failed to have left marks of some kind
14 on him. And by the way, he was being extracted at
15 this time for relocation to B Unit as a result of
16 statements attributed to him. I'll get into those in
17 a minute.

18 However, he was taken immediately to
19 the infirmary on the way to the B Unit Ad-seg and the
20 entry of the nurse in connection with that visit to
21 the infirmary showed no indication of any problems
22 whatsoever. Hers was essentially a routine
23 inspection for purposes of his transfer to B Unit.
24 And yet the purpose of this inspection was, indeed,
25 to reveal whether there were any injuries whatsoever

1 to this inmate going in to B Unit. The reason for
2 that is obvious, because if there are injuries of
3 some kind noted on the way in, it could never
4 eventually be argued that they were inflicted upon
5 him while he was at B Unit. None noted in
6 plaintiff's own exhibit, P-100.

7 Secondly, corrections Officer DuBois
8 was in the Trailer Four unit assigned to its
9 supervision at that time. I find that his testimony
10 about what Mr. Marino yelled out in the course of
11 these events is credible. It is not likely, frankly,
12 that he would have made a mistake as to the person
13 who did the yelling in such a serious matter as this
14 or that he would have allowed the SOGs to proceed
15 cavalierly just to arrest anybody who may have made
16 these remarks.

17 It was important to Dubois as the
18 supervisor of the unit to make sure that the right
19 person who had undertaken this disruptive conduct was
20 the one removed. He issued a contemporaneous report
21 entered into evidence as D-248 and I will take a
22 moment to read from it.

23 Dated July 31st, 1997, the day after
24 Officer Baker was killed and at the very outset,
25 really, of the lockdown procedure. I'll have a

1 little more to say about that as well in a few
2 minutes.

He writes in the description of the
alleged infraction on D-248 as follows: "On the
above date and time this officer heard inmate yelling
on inmate 4 East wing, 'Oh, Baker, oh, Officer
Baker,' over and over again.

Upon entering the wing, all became
quiet except for Inmate Bryce, number nine hundred,
who continued his chanting of the above.

I ordered Inmate Bryce, nine hundred,
to stop. And at this time Inmate Marino, 269569, who
is two beds away from Inmate Bryce, nine hundred,
yelled out, 'Fuck them. What happened, happened. If
they don't like it, we'll tear this place apart.' At
this point I called for a supervisor who responded
with SOG and removed both inmates from the wing."

I find that the testimony and contemporaneous exhibits generated by the SOG officer, Mr. Romer, regarding the resistance of Mr. Marino to extraction from his cell, as well as his resistance and conduct while walking to the infirmary, was also credible. Indeed, he also prepared contemporaneous reports, D-250 and D-251. Each of them is a disciplinary report, one with

1 regard to Mr. Marino's resistance to being cuffed and
2 extracted from the cell, the other with regard to his
3 conduct on the way to the infirmary.

4 In addition, the record reveals that
5 after Mr. Marino cleared the infirmary and was sent
6 to B Unit, unlike a lot of persons held for charges,
7 he was immediately shipped out the next day to
8 Northern State Prison. Eventually the court line
9 hearing on the charges against him, which included
10 the charge of encouraging others to riot written up
11 by officer Dubois and the other two resistance
12 charges written up by Mr. Romer, was conducted at
13 Northern State. He was found guilty of those charges
14 at that institution.

15 I find that the fact that Mr. Marino
16 was, indeed, immediately shipped out of Bayside is
17 consistent with the accuracy of the testimony offered
18 by the defense that indeed it was he who
19 intentionally yelled out this very dangerous
20 statement which could have led to resistance and
21 other inappropriate activity from those on his unit
22 who were within earshot.

23 There are other aspects of the
24 circumstances here, particularly in light of the fact
25 that we are at the very outset of a lockdown, which I

1 find also support the accuracy of the events as
2 recounted by the defendants' witnesses.

3 To be sure, the tension level was high
4 and the anger level of corrections officers was high,
5 in light of the death of one of their own only a day
6 before. But also, there was an extremely high level
7 of vigilance and scrutiny throughout the institution
8 at this time. And surely the corrections officers
9 and SOG officers were well aware of that, too. Their
10 conduct, as well as that of each inmate, was very
11 much under a microscope here. They were at the
12 outset of a lockdown period of indefinite duration
13 which was going to require a considerable amount of
14 transport and other contact between corrections
15 officers and inmates, more so than would normally
16 take place.

17 Frankly, I don't see Officer Dubois
18 risking his career by permitting the type of beatings
19 described by the plaintiff which would have been in
20 his plain view in the day room on his shift at this
21 trailer. I don't see Officer Romer, who himself had
22 previously been a Bayside Prison Corrections Officer,
23 although now stationed elsewhere and coming in with
24 the SOG unit, a person who knew a lot of the
25 corrections officers at Bayside and was the SOG unit

1 leader in connection with this extraction, putting
2 his fellow officers, himself and, indeed, the whole
3 operation to secure and stabilize Bayside State
4 Prison at risk with a beating of this sort. It just
5 doesn't make sense.

6 Accordingly, Mr. Marino's testimony
7 stands alone in the face of this other evidence
8 including the testimony of the defense witnesses that
9 the extraction did not involve conduct of that sort
10 whatsoever. At the very least, Mr. Marino has failed
11 to sustain his burden of proof by a preponderance of
12 the evidence that the beatings which he described
13 ever took place.

14 Finally, although not every item of
15 evidence has been discussed in this opinion/report,
16 all evidence presented to the Special Master was
17 reviewed and considered.

18 For the reasons set forth above, I
19 recommend in this report that the district court
20 enter an order and judgment of no cause for action
21 with regard Pasquale Marino.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.

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Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. X10857
Date: December 8, 2008